

Q&A By John T. Syrtash, Associate, Garfin Zeidenberg LLP
Answers to pressing questions on Family Law.

Damage Upon Separation

Question: I have been married for seven years. My wife and I live in the home I own, bought five years before marriage. However, the home is registered in my name only. My wife contributed nothing to purchase or enhancement to the value of this home. I also own a large amount of RRSPs and no debts. My wife has no assets or liabilities. Our marriage may end in separation, I am not certain. The mortgage payments are a bit high and I would prefer to move into a smaller home. What is my current situation if we were to separate and if not, what should I do to plan for separation down the road to minimize damage to my property holdings? Before marriage my home was worth \$350,000. Now it is worth more than \$550,000.

Answer: Currently if you were to separate, your wife would be entitled to half of the entire value of your matrimonial home, including its pre-marital value. She would also be entitled to half of the increase in the value of your RRSP's after-tax, since they increased after the date of marriage, valued as of the date of separation. There is nothing you can really do about your RRSPs, unless you foolishly and improperly attempt to transfer them into names of third parties, like a close and trusted relative or friend. However, the moment you do so the entire capital amount of the RRSPs becomes calculated as part of your taxable income for the year in which you cashed them. Moreover, if you transferred them close to the date of separation, say within the year or so, you could be accused of deliberately and fraudulently depleting your assets in order to deprive your wife of her rights to an equalization spirit. She might then like to recover what you try to hide from one of your other more exposed assets or from your income over a number of years, plus penalties and interest. Your matrimonial home is another matter. The law gives her an unfair split of its premarital value in your situation. She might want to buy a new home especially if you offer to do so in joint names. Since you will not have owned that second home on the date of marriage you can deduct the full value of the equity in the first home you owned to the date of marriage in the equalization calculation you separate. This effectively means that your wife would only benefit from her half share in the post-marital value of the second or any subsequent matrimonial home. According to your valuations, this means a saving of about \$100,000 if you were to separate in the near future.

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